IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2005

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA

Writ Petition No.3309 of 1998

S.Swigaradoss ... Petitioner

vs.

1.The Chairman,
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi.

2.The Managing Director,
Food Corportion of India,
16-20, Barakhamba Lane,
New Delhi.

3.The Zonal Manager (South),
Food Corporation of India,
No.2 Haddows Road,
Nungambakkam, Madras. ... Respondents

Writ Petition under Article 226 of the Constitution of India praying for issuance of writ of certiorarifid mandamus calling for the records relating to the order of respondent No.2 in Ref.No.7-3/83-RPI, dated 01.10.1996 relating to the termination of the petitioner from service and quash the same and consequently direct the respondents to reinstate the petitioner in service with all backwages, promotion, retirement benefits and any such pecuniary gain to the petitioner.

For Petitioner ... Mr.S.Kanagasabai

For Respondents ... Mr.P.D.Audikesavalu of
M/s.P.A.Daivasigamani
and Associates

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J U D G M E N T

The petitioner has prayed for issuing a writ of certiorarified mandamus for quashing the order passed by the second in Proceedings No.7-3/83-RPI, dated 01.10.1996, wherein the

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petitioner has been terminated from service. The petitioner has also prayed for further consequential direction regarding payment of all backwages, promotion, retirement benefits, etc.

2.The facts giving rise to the present writ petition are as follows:

The petitioner claims that his parents, who were Adi Dravida, had converted themselves to Christianity and the petitioner was born as such. But, he was re-converted to Hinduism in the year 1956 and continued as a member of Adi Dravida. Such conversion was published in the Gazette, dated 25th July, 1956. The petitioner further claims that he was selected by the Food Corporation of India on the basis of merit and not on the basis of any reservation and he was accordingly first appointed in 1968 and subsequently he was promoted as such not on the basis of any reservation. It is further claimed by him that in the year 1981, there was an Advertisement regarding Direct Recruitment to the post of D.M. (Deputy Manager). By then, since certain controversies had arisen regarding the caste of the petitioner, a suit had been filed by him, numbered as O.S.7926 of 1979 in the City Civil Court, Madras. An order had been passed regarding status-quo and in order to avoid contempt proceedings, Food Corporation of India by order, dated 11.06.1981, appointed the petitioner. It is claimed by the petitioner that the said selection was based on merits. However, in the appointment order a clause was unilaterally incorporated, indicating as if the selection was based upon the assumption that the petitioner belonged to scheduled caste and disputes were pending and further indicating that the petitioner would be required to refund all the benefits in case the judicial decision went against the petitioner. It is further claimed that the unilateral clause is not binding on him. It is further asserted that in fact at that time, two other persons had been appointed against reservation vacancies and the petitioner has not been so appointed. Even though the suit was initially decided in favour of the petitioner, ultimately the first appellate court held that the petitioner did not belong to scheduled caste community and allowed the appeal and dismissed the suit. The Second Appeal No.270 of 1984, filed by the petitioner was also dismissed on the ground that Civil Court had no jurisdiction to decide such dispute and ultimately the matter was taken to the Supreme Court by the petitioner. The Supreme Court in SLP No.27571 of 1995 decided against the petitioner. Thereafter, the Food Corporation of India passed the impugned proceedings terminating the services of the petitioner on the ground that even though he did not belong to scheduled caste, he had secured employment on that basis and therefore he has no right to continue. It was also indicated that the petitioner was not entitled to any terminal benefits. Such order is under challenge.

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3.The main contentions raised by the petitioner are to the following effect:

(a) The order of termination is illegal and void, as such order was passed unilaterally without holding any enquiry and without giving any opportunity to the petitioner.

(b) In the Supreme Court Case only it was decided that the civil court had no jurisdiction to decide on such question, but the question relating to the actual caste of the petitioner was not finally decided.

(c) He was appointed on merits as Deputy Manager and therefore even assuming that there was any irregularity in the initial appointment in the year 1968, there was no justification in terminating the services of the petitioner.

4. A counter affidavit has been filed on behalf of the respondents denying the assertions made in the writ petition. It is stated that the initial selection and appointment of the petitioner was against reservation quota on the assumption that the petitioner belong to scheduled caste. Since the status of the petitioner was under dispute, an office order bearing No.26(M-39) 77-Vig., dated 04.10.1979 was issued. However, at that stage, the petitioner had filed O.S.No.7926 of 1979. While the matter stood thus, the petitioner had applied for direct recruitment to the post of Deputy Manager in vacancies exclusively reserved for scheduled caste community. In the appointment order, dated 11.06.1981, it was specifically indicated :

> "... This offer of appointment is based upon the assumption that Sh.Swigaradoss is a member of the Scheduled Castes as notified by the Government of India. His attention is drawn to the fact that certain proceedings in this regard are pending disposal before the competent court of law. In the event of the judicial verdict being finally against such assumption, he should refund unconditionally, after accepting this offer of appointment, such extra amounts as might have been paid in the meanwhile to him in post of Deputy Manager (General) or any other higher appointment he might meanwhile come to occupy in the normal course. This would be without prejudice to the other consequences, if any, in terms of the Food Corporation of India (Staff) Regulations, 1971, as amended from time to time."

It is further indicated that the Collector of Madras, by proceedings dated 29.06.1983 verified the communal status of the petitioner and reported that the petitioner being a Christian

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cannot claim status of scheduled caste. Similar communication was sent by the Revenue Divisional Officer by proceedings, dated 09.07.1983. The said orders passed by the Collector and the Revenue Divisional Officer were challenged by the petitioner in W.P.Nos.8640 and 8641 of 1983. the aforesaid two petitions were taken along with Second Appeal No.270 of 1984 and all such matters were dismissed by order, dated 19.07.1995 and thereafter SLP No.27571 of 1995 was also dismissed. Since it was clearly concluded that the petitioner did not belong to scheduled caste community and since the appointment was on that basis, the order of termination had been passed. It has been further clarified that since the question of caste had been finalised in legal proceedings, which had gone upto the Supreme Court, there was no necessity of holding any formal enquiry before passing the order of termination.

5.In the background of the aforesaid facts, the contentions raised by the petitioner are required to be examined. The question as to whether the petitioner after being re-converted to Hinduism could have been treated as a member of the scheduled caste or not is no longer open to be agitated in view of the dismissal of the two writ petitions and the second appeal filed by the petitioner. Particularly in the two writ petitions specific challenge had been made to the orders passed by the District Collector and the Revenue Divisional Officer regarding the communal status. Since the decisions in such writ petitions have become final, it is not open to the petitioner to re-agitate the very same question.

6.In the decision reported in (2004) 2 SCC 105 (R.Vishwanatha Pillai v. State of Kerala), the Supreme Court has held as follows:

> "15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of law. He cannot claim a right to the postas he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of

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India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

7. The ratio of the aforesaid decision is squarely applicable to the present case.

8. Once it is concluded that the petitioner cannot claim a status as belonging to scheduled caste, holding of a further enquiry to determine his caste would have been an empty formality. Respondents have merely passed the order of termination on the basis of the conclusions in various legal proceedings which attained finality on dismissal of the SLP filed by the petitioner. Therefore, the order of termination cannot be said to be illegal merely because no enquiry had been held. In view of the aforesaid conclusion, the writ petition is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. No costs.

07.04.2005

gb/dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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1 cc to Mr.P.A.Deivasigamani, Advocate, SR.16706

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